

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ORDER

The Recommendation of the United States Magistrate Judge was filed with the Court in accordance with 28 U.S.C. § 636(b) and, on August 10, 2023, was served on the parties in this action. (ECF Nos. 21, 22.)

Defendant Holley filed objections to the Magistrate Judge's Recommendation. (See ECF No. 23.)

The Court has appropriately reviewed the Magistrate Judge’s Recommendation and has made a *de novo* determination in accord with the Magistrate Judge’s Recommendation.* The Court therefore adopts the Magistrate Judge’s Recommendation.

IT IS THEREFORE ORDERED that (i) Defendant Holley's Motion to Dismiss, (ECF No. 16), is **DENIED AS MOOT** as to any official capacity claim and **DENIED** in all other respects; (ii) via a Notice filed on or before September 15, 2023, Defendant Holley's

* Defendant Holley's objections request that the Court direct Plaintiff to make an additional filing confirming this intent to incorporate the allegations in the Complaint referencing Mike Apple as now referencing Defendant Holley. The Court deems such action unnecessary because, fairly read, the Amended Complaint already does that. If Plaintiff does not intend for all allegations in the Complaint referencing Mike Apple to reference Defendant Holley, Plaintiff bears the burden of moving to amend to clarify his intent.

counsel shall either (A) provide a correct address for service of process on Defendant Holley or (B) propose another option for obtaining service of process; and (iii) Plaintiff shall properly effect service on Defendant Holley by a deadline to be determined after the filing of the required Notice by Defendant Holley's counsel.

This, the 30th day of August 2023.

/s/ Loretta C. Biggs
United States District Judge